

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36068]

The Indiana Rail Road Company—Trackage Rights Exemption—CSX Transportation, Inc.

The Indiana Rail Road Company (INRD), a Class III rail carrier, has filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(7) for its acquisition of trackage rights over a line of railroad of CSX Transportation, Inc. (CSXT) between approximately milepost OZA 204.5 at Sullivan, Ind., and milepost OZA 219.05 at Oaktown, Ind., a distance of approximately 14.55 miles (the Line).

INRD states that, pursuant to a May 15, 2008 trackage rights agreement and two subsequent supplements to that agreement, dated as of August 1, 2009, and November 20, 2009, INRD holds trackage rights over CSXT's rail line from Sullivan to Carlisle and Oaktown, Ind.,¹ for the purpose of handling unit coat trains from mines at Carlisle and Oaktown to specified destinations on INRD or other railroads with which INRD interchanges.

¹ See Ind. Rail Rd.—Trackage Rights Exemption—CSX Transp., Inc., FD 35328 (STB served Dec. 31, 2009); Ind. Rail Rd.—Trackage Rights Exemption—CSX Transp., Inc., FD 35287 (STB served Sept. 2, 2009); Ind. Rail Rd.—Amended Trackage Rights Exemption—CSX Transp., Inc., FD 35137 (STB served May 22, 2008).

Pursuant to a written Supplemental Agreement No. 6 (Agreement) dated September 1, 2016,² CSXT has agreed to grant additional limited, temporary trackage rights to INRD over the Line. The purpose of the transaction is to allow INRD to handle loaded and empty coal trains between the Oaktown Mine and the Kentucky Utilities Generating Station in Harrodsburg, Ky., in interline service with other rail carriers.³ The Agreement provides that the trackage rights are temporary in nature and are scheduled to expire on December 31, 2017.⁴

The transaction may be consummated on or after October 29, 2016, the effective date of the exemption (30 days after the verified notice was filed).

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as

² The fully executed Agreement between CSXT and INRD was filed with the notice as Exhibit 2.

³ INRD's notice of exemption initially described the trackage rights as "local." However, on October 4, 2016, INRD filed a supplement in which it states that, beyond serving the mine at Oaktown, the temporary trackage rights will not allow INRD to provide local service at any points between Sullivan and Oaktown.

⁴ INRD states that, because the temporary trackage rights established by the Agreement are longer than one year in duration, it is not filing under the Board's class exemption for temporary trackage rights under 49 C.F.R. § 1180.2(d)(8). Instead, INRD has filed under the trackage rights class exemption at § 1180.2(d)(7). Concurrently, INRD has filed, in Docket No. FD36068 (Sub-No. 1), a petition for partial revocation of this exemption to permit these proposed trackage rights to expire on December 31, 2017, as provided in the Agreement. The Board will address that petition in a separate decision.

modified in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than October 21, 2016 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36068, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

Board decisions and notices are available on our website at “WWW.STB.GOV.”

Decided: October 11, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.